

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 BB-ACE

RIO CHAMA STREAM SYSTEM
Section 7: Rutherford & Plaza Blanca

Subfile CHRU-004-0044

MOTION FOR DEFAULT JUDGEMENT

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and requests the Court to enter default judgment against Henry G. Coors in these proceedings and as grounds states as follows:

1. Henry G. Coors is a defendant in these proceedings in connection with subfile CHRU-004-0044. Mr. Coors waived service of summons on August 8, 2002 and listed his mailing address on the waiver form as 163 Rainbow Dr. #6313, Livingston, Texas 77399-1063. *See* Waiver of Service of Summons filed September 3, 2002. All copies of orders and notices issued to Mr. Coors since that time have been sent to this address.

2. The hydrographic survey of the Rutherford subdistrict of Section 7 mapped 7.3 acres of irrigation water rights under the name of Henry G. Coors in subfile CHRU-004-0044 under the assumption that the water rights had been severed from the title to the land, and that Mr. Coors had retained ownership of those rights.

3. Mr. Coors has taken no action to claim water rights associated with subfile CHRU-

004-0044. A copy of a proposed consent order sent to Mr. Coors that would recognize those rights in his name was returned to the State unsigned without explanation. Mr. Coors has not attended any field office held in connection with the adjudication of water rights in Section 7 of the Rio Chama Stream System, nor has he contacted counsel for the State since the unsigned consent order was returned to him on August 20, 2002.

4. Several of the landowners in the area mapped under subfile CHRU-004-0044 have filed a Claim of Water Rights claiming ownership of portions of the 7.3 acres of water rights described in subfile CHRU-004-0044. *See* Claim of Water Rights of Steve Padilla filed July 15, 2004 (Doc. No. 7514); Claim of Water Rights of Dianna & Timothy Andrews filed July 15, 2004 (Doc. No. 7515); Claim of Water Rights of Kenneth E. Luhcs filed July 15, 2004 (Doc. No. 7516).

5. By Order filed September 7, 2004 (Doc. No. 7583), and Amended Order filed September 13, 2004 (doc. No. 7587), Mr. Coors was required to attend a scheduling conference on September 20, 2004, together with the claimants listed in paragraph 4 above, for the purpose of entering a scheduling order under F. R. Civ. P. 16 to determine any competing claims to the irrigation water rights described in subfile CHRU-004-0044. The two Orders informed the defendants that the failure of a water rights claimant to appear either in person or by counsel may result in the dismissal of their claim or any other relief appropriate under the circumstances.

6. Mr. Coors failed to attend the scheduling conference on September 20, 2004.

7. Under F. R. Civ. P. 16 (f) if no appearance is made on behalf of a party at a scheduling conference, the Court may make such orders with regard thereto as are just including rendering a default judgment against the party.

8. Under the circumstances, where Mr. Coors has taken no action to claim the water

rights described in subfile CHRU-004-0044, and where he has failed to attend a required scheduling conference under F. R. Civ. P. 16, the Court should render a default judgement against Mr. Coors finding that he has no interest in any water rights mapped under subfile CHRU-004-0044, and that those water rights remain appurtenant to the land now owned by the defendants described in paragraph 4 above (Steve Padilla, Dianna & Timothy Andrews, Kenneth E. Luhcs).

WHEREFORE the State respectfully requests the Court to enter a default judgement against Henry G. Coors finding that he has no interest in any of the irrigation water rights described in subfile CHRU-004-0044, and finding further that those water rights are appurtenant to the lands owned by defendants Steve Padilla, Dianna & Timothy Andrews, and Kenneth E. Luhcs as described in the claims filed by them on July 15, 2004 (Doc. No. 7514; (Doc. No. 7515); (Doc. No. 7516).

DATED: October 11, 2004

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I hereby certify that copies of the above Motion for Default Judgement mailed to following persons on October 12, 2004.

/s/ Ed Newville
Edward G. Newville

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